IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.3.2006

CORAM

THE HONOURABLE MR. JUSTICE ELIPE DHARMA RAO

WRIT PETITION NO.15564 OF 2003

Seeniammal ... Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by the Secretary to
   Government, Rural Development
   Department, Fort St. George
   Madras - 9.

2. The Revenue Divisional Officer
   Sivakasi
   Virudhunagar District.

3. The Commissioner
   Srivilliputhur Panchayat Union
   Srivilliputhur
   Virudhunagar District. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari as stated therein.

For Petitioner : Mr. V. Raghavachari
For Respondents : Mr. V. Subbarayan,
Special Government Pleader

O R D E R

The writ petition has been filed praying for the issuance of a Writ of Certiorari calling for the records on the file of the first respondent in G.O.Ms.No.15, Rural Development (C1) dated 20.2.2003 and published in the Tamil Nadu Government Gazette Part II Section III dated 20.2.2003 and quash the same as illegal, incompetent and without jurisdiction.

2. The petitioner, was elected as a Chairman of Srivilliputhur Panchayat Union on 31.10.2001 in the reserved women constituency. Out of the total strength of 15 Councillors of the

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Panchayat Union, according to the petitioner, 2 belonged to Congress, 6 to AIADMK, 3 MDMK, 2 DMK and one each to Pudhiya Tamilagam and Communist Party of India. Accordingly, the petitioner assumed office on 31.10.2001. She continued for ten months and then the trouble started at the instance of the local M.L.A. Thiru R.T.Inbatamizhan, who was trying to interfere with the administration of the Panchayat Union. When he had been insisting that the contracts should be given for public work to those persons nominated by him, she expressed her inability to adhere to the suggestions of the M.L.A., she cannot take unilateral decisions. Therefore, he arranged the Councillors to pass No Confidence Motion to remove the petitioner from the Chamber of the Panchayat Union. It is also stated that on 22.10.2002 within one year of her election as Chairman, a No Confidence Motion was moved and on the basis of the complaint the second respondent had telephonically called upon the third respondent on 13.11.2002 to convene a meeting. Referring to the telephonic conversation, the third respondent had convened a meeting to be held in the office of the second respondent on 18.11.2002. A complaint was lodged by 12 of the Councillors and it was handed over to the said local M.L.A., and the said local M.L.A., in his turn "recommended to the Revenue Divisional Officer, the second respondent to take action against the Chairman of the Panchayat Union under Section 212 of the Local Administrative Act by removing the petitioner from the post of Chairman for creating bad reputation to the Ruling Government in Tamil Nadu." A complaint was lodged by 12 Councillors, one of the Councillor Mr. K.Ravi, 9th Ward Councillor coming to know of the complaint had protested on 31.10.2002 that he had not endorsed his signature on the complaint dated 22.10.2002, he had further reiterated the same in the meeting convened on 18.11.2002 in the office of the second respondent and the second respondent also appears to have lodged a complaint to the police and a criminal case had been registered in Crime No.911/2002 under Section 468 of I.P.A., and the case is pending investigation. Section 212 (14) and (15) mandates that no motion shall be received within a period of one year of assumption of office of Chairman and if the motion had failed for some reason as set forth in Section 212(14) another motion cannot be moved within a period of one year of that date. On the basis of the recommendation of the said local M.L.A. On 22.10.2002, the second respondent has issued a show cause notice to the petitioner. The petitioner was called upon to offer her explanation and a meeting was proposed to be held on 27.12.2002. The notice of such meeting was circulated on 5.12.2002. The petitioner denied the charges made against her in and by her letter dated 2.12.2002. The petitioner was required to submit her written explanation for the charges within one week from the date of receipt of the memorandum. By letter dated 27.11.2002, immediately the petitioner requested the Revenue Divisional Officer to furnish a copy of the letter of the said M.L.A dated 22.10.2002. The second respondent refused to give the copy of the letter. She submitted

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her explanation on 2.12.2002. Thereafter, a notice dated 5.12.2002 was issued by fixing the date of meeting to move No Confidence Motion against the petitioner on 27.12.2002. Accordingly, the meeting was held on 27.12.2002 and No Confidence Motion was moved. Accordingly, the petitioner was removed from the post of Chairman. As intimated by the third respondent to the Government under sub-section of Section 212 of the Act, the Government issued the impugned order.

3. Now, on the basis of the above said facts and circumstances of the case, learned counsel for the petitioner referred to Section 212 of the Act which reads as follows:-

> Sec.212 Motion of no confidence in (Chairman or Vice-Chairman) of Panchayat Union Council:-
> (1) Subject to the provisions of this section, a motion expressing want of confidence in the (chairman or vice-chairman) of a panchayat union council may be made in accordance with the procedure laid down herein.
> (2) Written notice of intention to make the motion, signed by members of the panchayat union council not less in number than one-half of the sanctioned strength of the panchayat union council, together with a copy of the motion which is proposed to be made and a written statement of the charges against the (chairman or vice-chairman) shall be delivered in person to the Revenue Divisional Officer of the division by any two of the members of the panchayat union council signing the notice.
>
> (3) A copy of the statement of charges along with the motion shall be caused to be delivered to the concerned (chairman or vice-chairman) by the Revenue Divisional Officer and the (chairman or vice-chairman) shall be required to give a statement in reply to the charges within a week of the receipt of the motion by the (chairman or vice-chairman).
> (4) The Revenue Divisional Officer shall then convene a meeting for the consideration of the motion at the office of the panchayat union council at a time appointed by him.
> (5) The Revenue Divisional Officer shall given to the members notice of not less than fifteen clear days of the meeting and of the time appointed therefor.
> (9) As soon as the meeting convened under this section has commenced, the Revenue Divisional Officer shall read to the panchayat union council the motion for the consideration of which it has been convened, the statement of charges and the

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statement, if any, of the (chairman or vice-chairman) in reply to the said charges.
(10) There shall be no debate on any motion under this section.
(12) A copy of the minutes of meeting together with a copy of the motion and the result of the voting thereon shall forthwith on the termination of the meeting be forwarded by the Revenue Divisional Officer to the Government.
(14) If the motion is not carried by such a majority as aforesaid, or if the meeting cannot be held for want of the quorum referred to in sub-section(13), no notice of any subsequent motion expressing want of confidence in the same (chairman or vice-chairman) shall be received until after the expiry of (one year) from the date of the meeting.
(15) No notice of a motion under this section shall be received within (one year) of the assumption of office by the (chairman or vice-chairman)."

4. Relying on the above said provisions of law, learned counsel for the petitioner submitted that as per the recommendation of the said local M.L.A., dated 22.10.2002 and the copy of the complaint expressing their intention to move the No Confidence Motion dated 22.10.2002 was moved less than the period of one year from the date of assumption of the office by the petitioner. Therefore, the entire impugned action of the respondents is vitiated under sub-section 14 of Section 212 of the Act. He further contended that the Revenue Divisional Officer has not acted independently as per the provisions of the Act in moving the No Confidence Motion. He has acted at the behest of the said local M.L.A., on the basis of his recommendation and he fixed the date of meeting without verification of the signatures of the councillors, who submitted their intention to move No Confidence Motion against the petitioner. It is further submitted that when the petitioner requested the Revenue Divisional Officer to furnish a copy of the recommendation letter by the MLA, without furnishing the same, the second respondent has issued a show cause notice issued to the petitioner to submit her explanation to the above charges dated 19.11.2002. The second respondent refused to furnish the notice on the ground that the action is initiated as per the intimation given by the councillors and not on the basis of the recommendation of the said M.L.A. Therefore, the entire action of the respondents in moving the No Confidence Motion is contrary to the procedure contemplated under section 212 of the Act. Therefore, the impugned Government Order is liable to be set aside.

5. On the other hand, learned Standing Counsel appearing for the respondents submitted in the counter affidavit that the

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Revenue Divisional Officer has acted not at the behest of the said local M.L.A., as alleged by the petitioner but as per the procedures contemplated under the provisions of the Act, and there is no illegality committed by him. Therefore, it requires no interference by this Court.

6. Learned Standing Counsel for the respondents further submitted that 12 out of 15 Councillors sent and gave a notice on No Confidence Motion, the second respondent has issued a letter dated 18.11.2002 and thereafter he issued a show cause notice dated 19.11.2002. The petitioner gave her explanation on 2.12.2002. Thereafter, the signatures were verified on 18.11.2002. After verifying the signatures, the second respondent has satisfied himself and fixed the date of meeting on 27.12.2002 by notice dated 5.12.2002 giving fifteen days time. Therefore, the allegation made by the petitioner is baseless and cannot be considered.

7. From the above discussion, it is evident that though the learned Standing Counsel for the respondents has denied that the Revenue Divisional Officer has acted not at the behest of the said local M.L.A., and only on the basis of the intention expressed by the Councillors dated 22.10.2002, but as seen from the show cause notice issued to the petitioner to submit her explanation, the second respondent/Revenue Divisional Officer dated 19.11.2002 and with reference to the letter recommended by the said local M.L.A dated 22.10.2002 and the letter of the second respondent dated 18.11.2002 with regard to the verification of the Councillors' signatures, it can be computed that the Revenue Divisional Officer has acted upon the instructions of the said local M.L.A. Further, the copy of the intention expressed by the Councillors on 18.11.2002 and the meeting was convened in the office of the second respondent to verify the signatures of the Councillors was sent on 22.10.2002.

8. The legislature, in its wisdom, thought of providing proper representation to the women-folk in the administration of villages through village panchayats in the State of Tamil Nadu, and in pursuit of that laudable object, provided the rule of reservation for the women in the posts of Chairperson of the village panchayats in the State. While that being the object of the legislature, from the facts and circumstances of the present case it is evident that the petitioner, who was elected by the people of the village in a democratic way, was ousted from the office of the Chairperson of the Srivilluputhur village panchayat at the instance of the local Member of the Legislative Assembly. The allegation of the petitioner that the moving of the No Confidence Motion against her was the handiwork of the local Member of the Legislative Assembly as she did not yield to the unjustifiable and illegal demands made by the said local Member of Legislative Assembly in the matter of award of contracts cannot be

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taken lightly and I find some substance in the said allegation. On going through the records, it is evident that it was the said local Member of the Legislative Assembly who initiated the move of bringing a No Confidence Motion against the petitioner by sending a petition dated 22-10-2002 to the Revenue Divisional Officer. On going through the said petition, it is seen there are no specific allegations against the petitioner excepting a bald averment that she was acting individually and affected the welfare schemes of the Government. The conduct and attitude of the said legal Member of the Legislative Assembly was certainly not in the interest of the general public and also against the legislative intent and such conduct is highly deprecated.

9. Further, the petitioner was elected to the office of the Chairperson of the said village panchayat on 31-10-2001 and that on 22-10-2002, within one year from of her election as the Chairperson, the No Confidence Motion was moved against her on the basis of the petition dated 22-10-2002 given by the local Member of Legislative Assembly. The moving of the No Confidence Motion against the elected Chairperson is against the provisions of subsections (14) and (15) of Sec.212 of the Act. The said provisions mandate that no motion shall be received within a period of one year of assumption of office of chairman and if the motion had failed for some reason, another motion cannot be moved within a period of one year from that date. Further, I am not able to agree with the contention of the learned Government Advocate that the Revenue Divisional Officer has not acted as per the dictates of the local Member of Legislative Assembly, but acted only on the basis of the complaint dated 18.11.2002 given by the councillors of the panchayat as no record was placed before me in support of the said contention. On the other hand, the meeting was held on 18-11-2002 to verify the signatures of the councillors found on the complaint dated 22-10-2002 only as per the telephonic message.

10. From the facts and circumstances and the materials available on record, it is alleged that the moving of No Confidence Motion against the petitioner is politically motivated. The petitioner was elected to the office of Chairperson of the village panchayat by the local villagers in a democratic manner. It is not brought out on record produced before this Court any specific allegation against the petitioner, which prompted the local Member of the Legislative Assembly to instigate and encourage the other councillors of the panchayat union to initiate a No Confidence Motion against the petitioner. The petitioner was the choice of the local villagers, who elected her as the Chairperson of the village union. In a democratic set up, the mandate of the people is the supreme and their choice of selecting a representative from among them through a democratically held election should be honoured and protected. The initiation of No Confidence Motion on

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flimsy and vague allegations against the elected representatives of the people, as was done in the present case, is not conducive in the interest of the general public. This Court strongly deprecates such illegal and unlawful attempts by the Members of the Legislative Assembly in ousting the elected representatives of the village panchayats, who were elected by the people, by moving No Confidence Motion on baseless and vague allegations and the Executive authorities shall not be a party to such illegal and unlawful acts.

11. In view of the above discussion, I hold that the order of the second respondent as well as the consequential impugned order of the first respondent, removing the petitioner from the office of the Chairperson of the Srivilliputhur Village Panchayat are illegal and, therefore, they are set aside. The writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1.The Secretary to Government,
The State of Tamil Nadu
Rural Development
Department, Fort St. George
Madras - 9.
2. The Revenue Divisional Officer
Sivakasi
Virudhunagar District.
3. The Commissioner
Srivilliputhur Panchayat Union
Srivilliputhur
Virudhunagar District.

1 cc to Mr.V. Subbarayan, advocate, Sr. 12485
1 cc to Mr.V. Raghavachari, Advocate, Sr. 12398

W.P.No.15564 of 2003

TEJ (CO)
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